United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 24024

MADELINE WILKINSON,

Plaintiff-Appellant,

-vs.-

UNITED STATES OF AMERICA,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF AND APPENDIX OF APPELLEE, UNITED STATES OF AMERICA

PAUL W. WILLIAMS,
United States Attorney for the Southern District of New York,
Attorney for Defendant-Appellee,
United States of America.

MIRIAM R. GOLDMAN,
Assistant United States Attorney,
Of Counsel.

Complaint

DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF NEW YORK

Plaintiff Demands Trial by Jury

No. 101–101

MADELINE WILKINSON,

Plaintiff,

—against—

UNITED STATES OF AMERICA,

Defendant.

The above-named Plaintiff, by her attorney, Benjamin E. Kantrowitz, for a Complaint herein, respectfully alleges, on information and belief:

1) This action arises under the Servicemen's Indemnity Act of 1951, 38 U. S. C. A. §§ 851, et. seq., and 38 U. S. C. A. §§ 445, 445C and 551 and is based upon Servicemen's Indemnity Insurance on the life of Franklin J. Wilkinson, now deceased, payable by the Defendant.

2) Plaintiff resides at 481 Fort Washington Ave., New York, N. Y.

3) Heretofore and on or about the 3rd day of August, 1951 the said Franklin J. Wilkinson was inducted into the

Armed Forces of the United States of America and he was killed in action in Korea on or about July 14, 1953 at which time he was still a member of said Armed Forces, more specifically, of the United States Army, and by reason of said death in action said Servicemen's Indemnity insurance matured and became payable to the beneficiary of said insurance in the amount of $10,000.00.

4) The Plaintiff is the widow of said Franklin J. Wilkinson, and the Plaintiff and the said Franklin J. Wilkinson were married on or about August 30, 1952.

5) Plaintiff is the sole beneficiary of said Servicemen's Indemnity insurance and was designated as the sole beneficiary of said Servicemen's Indemnity insurance and as such beneficiary is entitled to receive the sum of $10,000.00 in accordance with said Servicemen's Indemnity Act of 1951.

6) Prior to the commencement of the within action the Plaintiff made and filed with the Veterans Administration a claim for benefits under said Servicemen's Indemnity Insurance but such claim was disallowed by said Veterans Administration, and upon appeal, was disallowed by the Board of Veterans Appeals on July 1, 1954.

7) A disagreement exists between the Plaintiff and the said Veterans Administration as to who is the beneficiary to receive payment of such Servicemen's Indemnity insurance.

8). Plaintiff has been obliged to employ an Attorney, Benjamin E. Kantrowitz, to institute and prosecute the within action to a final determination, and such Attorney is entitled to a reasonable fee for his services.

WHEREFORE, Plaintiff prays that a copy of this Complaint be served on the Defendant and for Judgment as follows:

I) *(sic)* Declaring the Plaintiff to be entitled to the full benefits of said Servicemen's Indemnity insurance and to all future benefits and payments thereunder all in the amount of $10,000.00.

II) Providing for a reasonable fee to be paid to the Attorney for the Plaintiff as compensation for his services in the within action.

III) Granting such other and further relief in the premises as may be just,

Dated: New York, N. Y.
June 3, 1955.

BENJAMIN E. KANTROWITZ
Attorney for Plaintiff
Office and P. O. Address
4879 Broadway
New York 34, N. Y.